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Of Attorneys for Plaintiff FLIR Systems, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

FLIR SYSTEMS, INC., an Oregon
corporation,

Plaintiff,

vs.

THOMAS L. GAMBARO, an individual
d/b/a **PATENT ENFORCEMENT
COMPANY**; and **MOTIONLESS
KEYBOARD COMPANY**, an Oregon
corporation,

Defendants.

No. CV 10-231-BR

MEMORANDUM IN SUPPORT OF MOTION
TO WITHDRAW AND SUBSTITUTE NEW
LOCAL COUNSEL FOR FLIR SYSTEMS,
INC.

Pursuant to LR 83-11(a)

Christopher J. Lewis and Devon Zastrow Newman of SCHWABE, WILLIAMSON & WYATT, P.C. (Schwabe), submit this Memorandum in Support of Schwabe's Motion to Withdraw and Substitute New Local Counsel for Flir Systems, Inc. (FLIR).

INTRODUCTION

Pursuant to LR 83-11(a), Schwabe hereby moves this Court for leave to withdraw as local counsel for FLIR and requests substitution of Susan Marmaduke of Harrang, Long, Gary and Rudnick, PC, as local counsel.

The primary issue before the Court in this litigation is whether or not various FLIR thermal imaging cameras infringed Defendants' expired U.S. Patent No. 5,332,322 (" '322 Patent") (Primary Issue). Unfortunately, the Defendants are doing everything they can to create one side show after another in an apparent attempt to distract this Court from the Primary Issue. Accordingly, despite there being no legal or ethical conflict of interest, Schwabe hereby moves to withdraw in order to stop the tangential litigation hemorrhage that has already infected this case. Schwabe's withdrawal should also help end the Defendants' disregard of the Federal Rules of Civil Procedure governing discovery and their inappropriate attempt to obtain information from Schwabe by virtue of its prior role as local counsel for Nokia, Inc., in an unrelated prior litigation.

ARGUMENT

Defendants filed a motion to disqualify Schwabe on the basis of alleged conflict of interest on May 10, 2010.¹ Schwabe responded, noting that the Oregon Rules of Professional Conduct make clear that Schwabe's prior representation of an individual shareholder of Defendant Motionless Keyboard Company (MKC) on unrelated business issues does not create any conflict of issue this case.² As opposed to awaiting the Court's ruling, however, the Defendants immediately sent a flurry of correspondence demanding immediate production of

¹ Docket No. 19.

² Oregon Rule of Professional Conduct 1.7; *See* FLIR's Response to Motion to Disqualify (Docket No. 26) and Declaration of Christopher J. Lewis in Support (Docket No. 28), ¶ 2.

overbroad, unrelated, and in some cases nonexistent or wholly privileged discovery allegedly necessary for it to prepare for the hearing on the motion to disqualify.³ Defendants have even filed a motion to compel such information, despite the fact that the thirty day response period allotted under the rules had not yet expired.⁴ Schwabe's withdrawal should moot these requests and get this case back on the proper track.⁵

Defendants are also using Schwabe's representation of Nokia in an unrelated litigation⁶ as a means to thwart FLIR's discovery requests, as Defendants have not produced a single responsive document in this case.⁷ Defendants responded to FLIR's discovery requests by claiming that Schwabe already had the majority of the requested documents by virtue of discovery in the prior litigation.⁸ Aside from the fact that little if any production exists in Schwabe's files from that case,⁹ those documents are from a different litigation between different parties. Schwabe's mere possession of any production does not entitle Defendants to obtain that production in this litigation. Of course, the proper approach to securing this information is by way of a subpoena served on the parties of the prior litigation.

Pro se Defendants' unreasonable demands and filings are an expensive distraction from the merits of the case, and show Defendants' inability to work within the framework provided by the Federal Rules of Civil Procedure governing discovery, understand the Oregon Rules of Professional Conduct regarding conflicts of interest, or the appreciate the ethical and legal rules prohibiting the disclosure of privileged information. Accordingly, for the sake of its client,

³ Declaration of Christopher J. Lewis in support of Motion to Withdraw and Substitute New Local Counsel for FLIR Systems, Inc. ("Lewis Decl."), ¶ 2.

⁴ See Defendant Motion 05 Under Rule 37(a) for Discovery by Schwabe, Williamson, Wyatt (Docket No. 34); Lewis Decl. ¶ 3.

⁵ Lewis Decl. ¶ 2.

⁶ *Id.*, ¶ 4.

⁷ *Id.*, ¶ 5.

⁸ *Id.*, ¶ 6, Exhibit 1, Defendants' Response to Plaintiff's First Request for Production, p. 2.

⁹ Lewis Decl., ¶ 7

FLIR, and to reduce the burden on the Court in needing to address these unnecessary and irrelevant side show issues, Schwabe requests the Court's permission to withdraw and substitute counsel Susan Marmaduke of Harrang Long. In an attempt to cut off future distractions, FLIR has taken all possible steps to ensure that Mrs. Marmaduke and her firm were in no way related to the prior litigation.¹⁰ In so doing, it is Schwabe and FLIR's hope that the parties and the Court can focus on the Primary Issue at hand.

CONCLUSION

For the reasons set forth above, Schwabe respectfully requests that this Court grant Schwabe's Motion to Withdraw and Substitute New Local Counsel for Flir Systems, Inc.

Dated this 15th day of June, 2010.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

s/ Christopher J. Lewis

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¹⁰ Lewis Decl., ¶ 7.

CERTIFICATE OF SERVICE

The undersigned certifies that on this 15th day of June, 2010, a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION TO WITHDRAW AND SUBSTITUTE NEW LOCAL COUNSEL FOR FLIR SYSTEMS, INC. was served via first class mail, postage prepaid, as follows:

Mr. Thomas Gambaro, individually
and dba Patent Enforcement Company
and
Motionless Keyboard Company
P.O. Box 14741
Portland, Oregon 97293-0741

s/ Christopher J. Lewis
Christopher J. Lewis